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Senate

CLASS ACTION FAIRNESS ACT OF 2005

Mr. CARPER. Mr. President, in an hour or two or three, we will have the opportunity to vote final passage on class action reform legislation.

The goals of this legislation are fourfold: One is to make sure when people—I say “little” people—are harmed by companies, big or small companies, that the little people have the opportunity to band together and be made whole and compensated for harm. The second goal is to make sure the companies know that if they shortchange their customers or others in our country, there will be a price to pay if they get caught. The third goal is to make sure when companies are called on the carpet and are involved in class action litigation, they are in a court, in a courthouse, with a judge, where the companies have a fair shake and the deck is not stacked against them. Finally, our goal is to make sure that, in shifting some class action litigation of a national scope with hundreds of or thousands of plaintiffs across the Nation, multimillions of dollars involved and defendants scattered across the country in different States than the plaintiffs, to make sure we move some class action litigation to Federal courts, we do not overburden the already busy Federal judiciary.

I take a moment or two today to go through and cite examples—not all of them; this is not an exhaustive list—but some of

the examples we have sought to make sure in many instances that the majority of class action litigation remains in State court where it belongs.

Let me cite a couple of examples where this bill has been modified over the years to enable a majority of class action litigation cases to stay in State courts. For example, these are cases where the litigation will remain in State courts: No. 1, cases against State and State officials will remain in state court. Smaller cases will remain in State court. Cases where there are fewer than 100 plaintiffs or in which less than \$5 million is at stake, those cases are not eligible for removal from State to Federal court. Cases in which two-thirds or more of the plaintiffs are from the same State as the defendant will remain in State court. Cases in which between one-third and two-thirds of the plaintiffs are from the same State as the defendant may well remain in State court. It is left to the discretion of the Federal judge to decide whether it is Federal or State based on the criteria laid out in the bill.

Similarly, cases involving a local incident or controversy, where the people involved are local, where at least one of the significant defendants involved in the litigation is within the same State, in those instances as well, the cases can and probably should remain in State courts.

That is a handful of the examples where we make sure a lot of the class action litigation remains in State courts where it belongs.

If you go back, the first bill introduced on class action litigation goes back about 7 years, I think, to 1997. That initial bill, along with a number of bills that were introduced in subsequent Congresses, was opposed by the Federal bench. There is an arm of the Federal judiciary called the Judicial Conference of the United States. They have a couple different committees, and from time to time they are asked, and they respond with their opinion, about whether certain legislation is needed, is appropriate, as it pertains to them and the work they are doing.

The initial legislation proposed, I think, in 1997, 1998, was opposed by the Federal judiciary through their Judicial Conference of the United States. In the next Congress, again, the Federal judiciary opposed that legislation. As the legislation has evolved, we have gone back to ask the Federal judiciary: What do you think? We know you were opposed to original versions of this bill in the late 1990s. How about this latest revision? They continued to oppose subsequent versions of the class action reform until the last Congress.

The Federal judiciary has the same concerns a lot of us have, the wholesale shifting of class action cases from the State courts to the Federal courts. Federal judges are busy, and they do not want to see an avalanche of litigation coming to them. With the adoption of a number of provisions in this legislation that comes to us today, the Judicial Conference wrote to the Senate in 2003 that, particularly given the changes Senator Feinstein proposed, their concerns about the wholesale shifting of State class

action litigation to the Federal courts, for the most part, had been met and been satisfied.

They are not taking a position, saying the Senate should vote for this legislation. That is not what they are about. But the concerns they had expressed earlier, year after year after year, have been addressed.